

# **Exhibit 3**



1 Plaintiff -- plaintiff, on that side.

2 Q. On behalf of the infant's family?

3 A. Yes.

4 Q. Were you -- you were a medical  
5 expert in that case?

6 A. Administrative and medical.

7 Q. When you say "administrative,"  
8 explain to me what you mean.

9 A. Hospital policies and procedures.

10 Q. Did you provide expert testimony  
11 regarding credentialing in that case?

12 A. Let's see. I'm trying to think if  
13 we got into credentialing. I don't believe we  
14 got into credentialing.

15 Q. Did you give any testimony  
16 regarding the Educational Commission for  
17 Foreign Medical Graduates in that case?

18 A. No, I did not.

19 Q. In any of these cases we just  
20 discussed, was there an issue regarding the  
21 sufficiency of the credentialing by ECFMG?

22 A. No, there was not.

23 Q. You mentioned that you had some  
24 cases that fell outside of the time frame

1 provided for by the Federal Rules for  
2 Disclosure with your expert report earlier  
3 today.

4 Do you remember that?

5 A. Yes.

6 Q. Do you remember any of those cases?

7 A. Only a few -- several of them were  
8 filed against me as a physician.

9 Q. Sort of run-of-the-mill malpractice  
10 types --

11 A. Correct.

12 Q. -- of cases?

13 In what specialty?

14 A. Pediatric emergency and pediatric  
15 critical care.

16 Q. Did any concern your credentialing?

17 A. I don't remember the specifics. I  
18 was a named defendant, so there may have  
19 been -- there may have been something about  
20 credentialing against me. I don't know. I  
21 don't remember. They were all dismissed. I  
22 don't remember most of the details.

23 Q. Are you certified by ECFMG?

24 A. No, I'm not.

1           Q.       Other than the Jenny Butler and the  
2   Abid case listed here, have you ever served as  
3   an expert witness other than the case that  
4   brings us here today?

5           A.       I believe so, yes.

6           Q.       Do you recall in which cases?

7           A.       Not off the top of my head, no.

8           Q.       Do you recall, generally speaking,  
9   the subject matter on which you have served as  
10  an expert?

11          A.       It's varied either administratively  
12  as a physician or in my specialties of  
13  pediatrics.

14          Q.       Can you estimate to me how many  
15  times other than the two listed on this  
16  disclosure you've served as an expert witness?

17          A.       I think two or three roughly.

18          Q.       Do you recall whether you've ever  
19  previously served as an expert witness  
20  regarding credentialing?

21          A.       I may have been asked. I don't  
22  remember. It may have been part of -- it may  
23  have been part of the sort of overall hospital  
24  administration and policies.

1           Q.       Do you recall whether credentialing  
2       was ever a central element of your opinions  
3       other than in the case today?

4           A.       In the administrative cases, it  
5       usually is part of it.  It's usually all the --  
6       it's one of the aspects.

7           Q.       What are the other aspects in  
8       administrative as you've been talking about it?

9           A.       Hospital policies and procedures,  
10      transfer admission guidelines.

11          Q.       Say that last one again.

12          A.       Admission guidelines.

13          Q.       For a patient to be admitted to the  
14      hospital?

15          A.       Correct.

16          Q.       When you served as an expert  
17      witness regarding administrative types of  
18      issues, was that always about hospital  
19      administration?

20          A.       Yes, predominantly hospital  
21      administration.

22          Q.       Anything other than hospital  
23      administration?

24          A.       It may be associated healthcare,

1 communities.

2 Q. Do you still see patients?

3 A. I do.

4 Q. Where?

5 A. Right now I'm doing that as  
6 per-diem or part-time work.

7 Q. At a particular hospital?

8 A. It varies. They're usually  
9 temporary assignments.

10 Q. Generally in the Denver, Colorado,  
11 area?

12 A. It can be anywhere.

13 Q. In what specialty?

14 A. Either pediatric emergency or  
15 pediatric critical care.

16 Q. Are you trained as an  
17 obstetrician/gynecologist?

18 A. No, I am not.

19 Q. So your typical patients are  
20 pediatric patients; is that correct?

21 A. Yes, they are.

22 Q. In the course of your practice,  
23 have you knowingly come across any patients  
24 treated by Dr. Akoda?

1           A.       I have not.

2           Q.       If I use the name Dr. Akoda, do you  
3 know to whom I am referring?

4           A.       I am familiar with who he is.

5           Q.       For ease today, I'm just going to  
6 use that one name; but I do intend it to be the  
7 individual that is the subject of the lawsuit  
8 that we're here for.

9                   Do you understand that?

10          A.       Yes.

11          Q.       Okay. Have you done any  
12 examinations of any of the plaintiffs in this  
13 lawsuit?

14          A.       No, I have not.

15          Q.       Have you met any of them?

16          A.       No, I have not.

17          Q.       Have you reviewed any of their  
18 medical records?

19          A.       No, I have not.

20          Q.       Have you been able to evaluate  
21 what, if any, harm has come to them by their  
22 interactions Dr. Akoda?

23                   MR. VETTORI: Objection. That's  
24 not the scope of his expert testimony.



1 BY MS. McENROE:

2 Q. You can answer the question anyway  
3 unless he tells you not to?

4 A. No, I have not.

5 (Whereupon, Exhibit No. 4, Report  
6 of David Samuel Markenson, MD, was marked  
7 for identification.)

8 MS. McENROE: For the record, this  
9 is a very wide table.

10 BY MS. McENROE:

11 Q. All right. So I just handed what's  
12 been marked as Exhibit 4.

13 A. Uh-huh.

14 Q. Have you seen this document before?

15 A. Yes, I have.

16 Q. What is it?

17 A. This is the report I had submitted.

18 Q. In this lawsuit, correct?

19 A. Correct.

20 Q. I'd like to direct your attention  
21 to page 5 in Exhibit 4, so page 5 of your  
22 report?

23 A. Yes.

24 Q. The very last paragraph there says,

1 "It is my opinion, to a reasonable degree of  
2 professional certainty, that these failures on  
3 the part of ECFMG to comply with the standard  
4 of care were the direct cause of Akoda being  
5 certified by ECFMG and which are the direct  
6 cause of the harms caused to the plaintiffs and  
7 the members of the class."

8 Do you see that?

9 A. Yes, I do.

10 Q. On what basis are you saying that  
11 you know what the direct cause of harms is, the  
12 cause to the plaintiffs having never met them,  
13 having never evaluated them, and not having  
14 reviewed their medical records?

15 A. Had ECFMG not certified Dr. Akoda,  
16 he would have not been licensed as a physician,  
17 admitted to a residency, or allowed to treat  
18 the patient. So no harm from him would have  
19 come to them had ECFMG done their actions and  
20 not certified him.

21 Q. So you're not giving this opinion  
22 here in this last paragraph on page 5 on the  
23 basis of any specific knowledge of alleged  
24 harms caused to the plaintiffs; you're just

1           Q.       And those reflected that he was  
2   licensed to practice medicine in Nigeria,  
3   correct?

4           A.       Without -- I don't know if they  
5   were valid or not, but they do reflect that he  
6   did attest to an ECFMG certified that he had.

7           Q.       So other than the course of events,  
8   if you will --

9           A.       Uh-huh.

10          Q.       -- in this case, do you have any  
11   knowledge or specific opinions about any  
12   particular harms that you're making opinions  
13   about for any of the plaintiffs in this case?

14                   MR. VETTORI:  Objection.

15                   You can answer.

16                   THE WITNESS:  Sure.  Just that he  
17   was allowed to hold himself out as a  
18   physician having not met legal  
19   requirements.

20                   Obviously a patient who is going to  
21   discover that someone who examined them,  
22   you know, who was not who they said they  
23   were is going to have an effect on that  
24   patient.  It's tremendous invasion of

1           privacy. It's a tremendous invasion of  
2           their person.

3                   Anything that happened subsequent  
4           to that, in terms of all the medical care  
5           he rendered, would have never been allowed  
6           had the proper steps been done to not  
7           allow him to proceed.

8   BY MS. McENROE:

9           Q.       But do you know about any specific  
10          harm caused to any specific plaintiff in this  
11          case?

12          A.       I did not read -- as I've said, I  
13          have not reviewed their medical records. All I  
14          know is that they've come to be aware that they  
15          were treated by someone who wasn't who he said  
16          he was. They were examined by someone who  
17          wasn't who he said he was, and that by itself  
18          to anyone is going to have significant effect.

19          Q.       Are you able to say I know that  
20          this person suffered that harm? Are you able  
21          to specifically say that about any of the  
22          plaintiffs in this case?

23          A.       All I'm able to say is they would  
24          have never been treated by him had ECFMG done

1     their due diligence, and I am sure that they  
2     themselves are having effects of being treated  
3     by someone who isn't who they say they were and  
4     isn't the physician he supposedly was.

5             Q.       Other than your armchair  
6     perspective, on what basis do you say you're  
7     sure that that's what's happening?

8             MR. VETTORI:   Objection as to form.

9             THE WITNESS:   I am -- well, one had  
10     ECFMG not certified him, he would never  
11     would have been in contact with those  
12     patients.   That's a binary  
13     black-and-white.

14             Number 2, they have now come to  
15     know that someone who treated, examined  
16     the, including invasive examinations was  
17     not who they say they were.

18     BY MS. McENROE:

19             Q.       If the licensing boards had not  
20     granted him medical licenses, do you believe he  
21     would have treated these patients?

22             A.       I believe had -- if ECFMG had not  
23     certified --

24             Q.       I'm sorry.   I'm going to move to

1 strike.

2 My question is specifically about  
3 the medical boards.

4 A. Uh-huh.

5 Q. So I understand you're going back  
6 to ECFMG, but I'm specifically asking --

7 A. Uh-huh.

8 Q. -- had the medical boards not  
9 licensed him to practice medicine, is it your  
10 position that he would have laid hands on the  
11 patients anyway?

12 A. I did -- so again, I was  
13 communicating what's required to get licensed;  
14 but if you want to just look at once he had a  
15 license, without a license, he would not have  
16 been able to obtain medical privileges.

17 Q. Do you think the medical licensing  
18 authorities in this case did what they should  
19 have done regarding Dr. Akoda?

20 MR. VETTORI: Objection. It's  
21 beyond the scope of his opinions.

22 BY MS. McENROE:

23 Q. You may answer.

24 A. The medical license boards as far

1 as I can tell -- I haven't seen their internal  
2 records -- but from the records provided to me,  
3 they issued him a license.

4 Q. Right. Do you think they should  
5 have done that?

6 A. I would have to review all their  
7 internal records. I do know that they based it  
8 on the documents submitted at USMLE ECFMG  
9 certification.

10 Q. Do they only base it on USMLE ECFMG  
11 certification when they license a medical  
12 physician in their date?

13 A. Again, I would have to review their  
14 internal records and his application; but the  
15 process for license -- when one applies for  
16 licensure, it's based on either medical school  
17 verification in the U.S., not in the U.S.  
18 ECFMG, passing of your USMLEs under the current  
19 situation -- before USMLE, there were other  
20 exams -- and completion of at least, in most  
21 states, one year of internship.

22 Q. As part of a residency program  
23 typically?

24 A. Typically, yes.

1           Q.       And he was accepted to a residency  
2     program that he then later completed at Howard  
3     University Hospital, correct?

4           A.       Correct.

5           Q.       Do you think without getting  
6     admitted to Howard University Hospital's  
7     residency program, he would have treated these  
8     patients?

9                   MR. VETTORI:  Objection.

10                  You can answer.

11                  THE WITNESS:  It's purely  
12     speculative.  He would have had to have  
13     done one year of training somewhere to  
14     obtain licensure.

15     BY MS. McENROE:

16           Q.       And is it your understanding that  
17     the year of training he did to obtain licensure  
18     in this case took place at Howard University  
19     Hospital?

20           A.       That is my understanding, yes.

21           Q.       Have you done any analysis of what  
22     was submitted to Howard University Hospital for  
23     him to be admitted to a residency program  
24     there?



1           A.       I have not. I have no part of  
2       those records.

3           Q.       Have you ever played a role in  
4       hiring any medical school graduates into  
5       residency programs?

6           A.       Yes.

7           Q.       At what residency programs?

8           A.       I served as what's known as the DIO  
9       or designated institutional official for  
10      multiple hospitals while I was VP of GME for  
11      Hospital Corporation of America.

12          Q.       Where was that located?

13          A.       There were several -- a multitude  
14      of hospitals.

15          Q.       You can take a minute to explain  
16      just briefly so I understand.

17          A.       Yes. I served for what was known  
18      as HealthONE, which were hospitals in the  
19      greater Denver area; for -- what was the  
20      hospital called -- a hospital in Kansas City.  
21      I'm totally blanking.

22          Q.       Your C.V. is there in case it's  
23      helpful for you.

24          A.       Yeah. I'm trying to remember the

1 name of the one. So it was Research Medical  
2 Center in Kansas City which oversaw the --  
3 included the hospitals in the Kansas City area  
4 that were owned by HCA, Ogden Regional Medical  
5 Center which included the Salt Lake City  
6 hospitals owned by HCA and Eastern Idaho  
7 Regional Medical Center.

8 Q. Were the residency programs  
9 involved in those medical centers only about  
10 pediatric emergency or critical care?

11 A. No, they were not.

12 Q. All right. So it was a broader  
13 range of residency programs?

14 A. Yes, it was.

15 Q. Was it the full range of residency  
16 programs available at those hospitals?

17 A. I'm not sure what you mean.

18 Q. Yeah. So I'm not trying to ask you  
19 a trick question in any sense. I'm just trying  
20 to understand in your role as DIO for these  
21 organizations that we were just referring to,  
22 were you overseeing the admission to the  
23 residency programs for all the residency  
24 programs that those facilities offered at any

1 given time?

2 A. I was involved -- the decision is  
3 the program director's, but I oversee the  
4 processes, procedures, and the program  
5 directors.

6 Q. Have you ever served as the program  
7 direct for any residency programs?

8 A. No, I have not.

9 Q. Have you ever interviewed anybody  
10 applying to a residency program?

11 A. Yes, I have.

12 Q. Approximately how many times?  
13 Hundreds? Five? You know, somewhere --

14 A. Probably not hundreds, but close to  
15 it.

16 Q. Okay. So a large number of times?

17 A. Yes.

18 Q. In your experience -- in your  
19 various roles, was an interview always involved  
20 before a resident would get offered a residency  
21 program as far as you're aware?

22 A. In most cases, the last step after  
23 all the screening that is done, you know,  
24 verification of board scores, eligibility for

1     residency, all the steps, most residencies do  
2     use as interview as the last step in the  
3     process.

4             Q.       Were you ever involved in residency  
5     programs that did not interview their residents  
6     before they admitted them?

7             A.       I think there may have been cases.  
8     There's something called a scramble, you know,  
9     fill your spots.   Some --

10            Q.       So after the Match, if there's not,  
11     if there are extra spots left, you get --

12            A.       Sometimes a resident may get in  
13     without a formal interview.

14            Q.       But would there usually been an  
15     informal interview or a conversation before  
16     that would happen?

17            A.       Usually.

18            Q.       Is that in the vast majority or  
19     vast minority of cases?

20            A.       That's minority.

21            Q.       You referred to the interview  
22     typically being the last step, in your  
23     experience, for residency program admission.  
24     And you mentioned some other screening.

1                   What else, in your experience, is  
2   involved in the offering of a residency  
3   position to a resident?

4           A.       The initial screening is done to  
5   make sure that the person is eligible for  
6   residency. So presence of medical school  
7   graduation, confirmation, or ECFMG  
8   certification.

9                   So it's sort of that's the first  
10   step. If they don't graduate medical school or  
11   they don't have an ECFMG certification, the  
12   process would stop.

13          Q.       Okay.

14          A.       Following that process, one that  
15   has letters of reference, Dean's  
16   recommendation, board scores; and there's  
17   usually a cutoff to determine of those who then  
18   obtain an interview.

19          Q.       When you say "of those," you mean  
20   cutoff of the board scores?

21          A.       Board scores, letters of reference,  
22   recommendations.

23          Q.       Any other information collected or  
24   reviewed in connection with residency program

1 applications that you recall, you know, sitting  
2 here today?

3 A. Usually not, no.

4 Q. Is there usually an application  
5 form, like, they actually fill out like a job  
6 application?

7 A. They don't anymore. It's all done  
8 through the electronic system called ERAS.

9 Q. Okay. Previously, do you know  
10 whether there had been applications to  
11 residency programs in, say, the 2011 time  
12 frame?

13 A. There would have not been. They  
14 would have all been ERAS.

15 Q. Even then?

16 A. Yes.

17 Q. In your experience, do residents  
18 get paid?

19 A. Yes, they do.

20 Q. Do they get paid through any  
21 sources of funding in particular?

22 A. The hospital pays them.

23 Q. Does the hospital typically  
24 withhold taxes?

1 certification.

2 Q. Okay. You said for a U.S. grad, it  
3 was possible to do additional confirmations or  
4 checks of their medical school graduation.

5 A. Well, just other checks. We  
6 could -- if you were deciding between two  
7 applicants, the last stage of an interview  
8 process, you might be able to call up there  
9 Dean and get a personal feedback or a clerkship  
10 director. So at the final stage, we had that  
11 ability.

12 Q. And you couldn't do that for  
13 foreign educated doctors?

14 A. It was not feasible or possible.

15 Q. Why not?

16 A. Just we didn't have the access or  
17 the registries of who the schools were, or who  
18 the clerkship directors were.

19 Again, that was a last process if  
20 you were deciding between one or two. You had  
21 that additional nuance you could use.

22 Q. Would you expect a U.S. medical  
23 school to be the source of social security  
24 numbers for applicants to residency programs?

1           A.       Traditionally, I don't -- as a  
2   program director, we weren't -- I would not  
3   have been involved in social security. That  
4   would have been HR department.

5           Q.       But you would not have relied on  
6   the medical schools in United States to do some  
7   sort of identity verification or check that a  
8   social security number was valid?

9           A.       I don't believe they would  
10   traditionally do that because they weren't  
11   employing individuals.

12          Q.       And what about ECFMG doing that?

13          A.       I don't -- I believe ECFMG -- my  
14   understanding was, as a program director, my  
15   role here is ECFMG verifies identity and  
16   medical school graduation, the link between the  
17   two.

18          Q.       What do you mean by "identity"?

19          A.       That the person who was holding  
20   themselves out as Individual A who graduated  
21   medical school and provides a medical school  
22   documentation is Individual A who does have  
23   that medical school diploma.

24          Q.       How do you expect that they do



1     that?

2           A.       They would -- again, any -- they  
3     would verify with the medical school that the  
4     individual who was presenting themselves with  
5     the application was the one who was issued the  
6     diploma; and that would be through, obviously,  
7     the names matching completely.

8                   And I know that ECFMG also uses  
9     photographic identification too.

10          Q.       What's your understanding about how  
11     photographic identification is used here?

12          A.       I believe, as I've seen, is that  
13     it's on the application; and it's submitted  
14     back to the medical school with the  
15     verification.

16          Q.       Do you have any -- strike that.  
17                   Prior to being involved in this  
18     lawsuit, had you ever seen an ECFMG  
19     application?

20          A.       I had not.

21          Q.       Did you have any expectation prior  
22     to being involved in this case about  
23     photographic identification regarding ECFMG  
24     certification?

1           A.       I had an expectation that it was  
2   identity verification. I didn't know the  
3   mechanism used.

4           Q.       On what basis did you have an  
5   expectation there was identity verification?

6           A.       ECFMG was held out to us based on  
7   materials we had seen from them and just from  
8   knowledge in the community that they were  
9   responsible for and attesting to that the  
10   individual who's applying to me, John Smith  
11   I'll say, is, in fact, the John Smith who was  
12   issued a medical school diploma from the  
13   medical school in question.

14          Q.       So is it your expectation that  
15   ECFMG would be certifying that the person who  
16   would physically show up at your hospital was  
17   the person who graduated from that medical  
18   school?

19          A.       The person identified on their  
20   certification.

21          Q.       Right.

22          A.       The person to which the  
23   certification was issued was one and the same  
24   with the person who had graduated the medical

1 school.

2 Q. And you understood that was  
3 completed through primary source verification  
4 of the diploma?

5 A. Correct.

6 Q. And now you have the expectation  
7 that it also had to do with the photograph?

8 A. I knew that their -- I didn't know  
9 the specific mechanism that they did, but now I  
10 know that it was through photographic.

11 Q. And you say that just based on  
12 having seen applications in this case?

13 A. Correct.

14 Q. When hiring residents or  
15 interviewing residents, have you come across  
16 applicants who had failed components of the  
17 USMLE?

18 A. Yes.

19 Q. And was it your expectation that  
20 those individuals would have a higher or a  
21 lower likelihood of being admitted into a  
22 residency program?

23 A. Someone who has failed would have a  
24 lower likelihood than someone who had passed.

1           Q.       When hiring residents, do you have  
2       an expectation or recollection of how  
3       successful you would expect a foreign educated  
4       physician to be in applying for a residency  
5       program if they had multiple failures on a  
6       step?

7           A.       There's no generic answer because  
8       different residencies will have different  
9       standards.

10          Q.       Do you have an understanding of  
11       whether having failed one or more steps  
12       multiple times could make applying for a  
13       residency program more challenging for an  
14       applicant?

15          A.       Failing would make you less  
16       attractive than someone who passed to a  
17       residency program.

18          Q.       Are there enough residency program  
19       slots for the applicants applying each year in  
20       your experience?

21          A.       It depends on the specialty.

22          Q.       Are there some specialties for  
23       which there would be more applicants than slots  
24       in any given year?

1     this morning, you are not ECFMG certified,  
2     correct?

3             A.       Correct.

4             Q.       And you are a medical physician in  
5     the United States?

6             A.       Correct.

7             Q.       You attended medical school in the  
8     United States?

9             A.       Correct.

10            Q.       You are not currently an employee  
11    of ECFMG, correct?

12            A.       Correct.

13            Q.       And have you ever been employed by  
14    ECFMG?

15            A.       No, I have not.

16            Q.       Are you currently on the Board of  
17    Trustees of ECFMG?

18            A.       No, I am not.

19            Q.       Have you ever been on the Board of  
20    Trustees of ECFMG?

21            A.       No, I have not.

22            Q.       You've never sat on the Medical  
23    Education Credentials Committee of the Board of  
24    Trustees of ECFMG, correct?

1           A.       No, I have not.

2           Q.       Have you ever had direct personal  
3       contact with that committee?

4           A.       I have not.

5           Q.       Prior to this case, did you know  
6       that committee existed?

7           A.       I believe I've seen it in some of  
8       the materials.

9           Q.       You mean some of ECFMG's materials?

10          A.       Correct.

11          Q.       Do you recall the circumstances in  
12       which you saw that?

13          A.       I think it was just in learning  
14       about it in some of them.

15          Q.       Prior to this case, had you ever  
16       been personally involved in or aware of a case  
17       or an allegation of irregular behavior by  
18       ECFMG?

19          A.       By ECFMG? No.

20          Q.       Have you ever been familiar with  
21       the term of "irregular behavior" prior to this  
22       case otherwise?

23          A.       Yes.

24          Q.       In what setting?

1           A.       I have heard it be used in USMLE  
2   setting.

3           Q.       Have you ever been personally aware  
4   of an allegation of irregular behavior in the  
5   USMLE setting?

6           A.       Just heard about the process.

7           Q.       You personally have not been  
8   involved in any irregular behavior proceedings?

9           A.       I have not.

10          Q.       As a witness or otherwise?

11          A.       No, I have not.

12          Q.       Have you ever sat on any committees  
13   or boards for the USMLE?

14          A.       I have not.

15          Q.       Have you ever been employed by  
16   USMLE?

17          A.       I have not.

18          Q.       When you were coming through and  
19   becoming medical licensed, was the USMLE in  
20   existence?

21          A.       Yes, it was.

22          Q.       Okay. And you took the USMLE steps  
23   that existed at that time?

24          A.       Yes, I did.

1           Q.       Was that Step 1, Step 2, and  
2   Step 3?

3           A.       Yes.

4           Q.       And Steps 1 and 2 were prior to  
5   residency. And did you take Step 3 during your  
6   residency?

7           A.       Yes, I did.

8           Q.       Aside from having read about the  
9   Medical Education Credentialing Committee and  
10   passing from some ECFMG materials, do you have  
11   any other basis to have familiarity with the  
12   work or business of the Medical Education  
13   Credentials Committee?

14          A.       Not prior to this case.

15          Q.       Do you know anyone who sits on the  
16   Medical Education Credentialing Committee?

17          A.       I do not believe so.

18          Q.       Have you spoken with, that you know  
19   of, that sits on the Medical Education  
20   Credentials Committee?

21          A.       No.

22          Q.       Do you know anybody on the board of  
23   ECFMG?

24          A.       I do not.



1           Q.       Do you know the composition of the  
2 board of ECFMG?

3           A.       I do not know the composition.

4           Q.       Do you know whether they're medical  
5 professionals or otherwise?

6           A.       I believe they are, yes.

7           Q.       You believe there are some doctors  
8 on?

9           A.       Yes.

10          Q.       Do you have any basis for that  
11 knowledge, or that's just your expectation?

12          A.       I believe there's representatives  
13 of different associations, so I presume that  
14 there were physicians on it.

15          Q.       How do you have that understanding?

16          A.       Just from general knowledge,  
17 nothing specific.

18          Q.       You've never appeared before the  
19 Medical Education Credentialing Committee; is  
20 that correct?

21          A.       Correct.

22          Q.       Have you ever been involved, that  
23 you know of, in a request for an exception to  
24 the Medical Education Credentials Committee.

1 If I can give you an example of what I mean:  
2 Has someone ever come to you or been a resident  
3 for you all where they, for example, were from  
4 a war-torn country, couldn't get access to  
5 their medical school so had letters of  
6 attestation prepared by others in the United  
7 States?

8 A. No.

9 Q. Not that you know of?

10 A. Not that I know of.

11 Q. Okay. Are you familiar with the  
12 concept or have you ever heard of the  
13 seven-year rule?

14 A. I'm not sure what you're referring  
15 to.

16 Q. Okay. So do you have any  
17 understanding of whether there is a time  
18 limitation within which certain steps need to  
19 be passed in order for examination scores to  
20 remain valid?

21 A. I do. There were not when I was  
22 involved.

23 Q. Okay. So you've never been  
24 involved in a request for an exception to that

1     you're surmising as opposed to some knowledge  
2     or specialized experience you have with the  
3     Medical Education Credentials Committee; is  
4     that correct?

5             A.       Correct. It's based on the facts  
6     that are in the file.

7             Q.       The way you read the facts in the  
8     file?

9             A.       I believe it's pretty  
10    straightforward that he admitted identity  
11    fraud.

12            Q.       Well, he admitted to using his  
13    cousin's social security number, but he denied  
14    being that individual, correct?

15            A.       Correct. But he held himself out  
16    as the holder of that identity or social  
17    security identity.

18            Q.       Do you know what, if for any  
19    purpose, ECFMG uses social security numbers?

20            A.       I do not know.

21            Q.       Do you know if foreign medical  
22    graduates need to have a social security number  
23    to apply to ECFMG?

24            A.       I do not.

1           Q.       Do you know what resources, if any,  
2       were available to ECFMG for verifying a social  
3       security number at that time?

4           A.       I do not know.

5           Q.       Do you know how the Medical  
6       Education Credentials Committee deliberates  
7       over allegations of irregular behavior?

8           A.       My knowledge is based on the files  
9       provided by ECFMG; and as far as I can see, at  
10      the time of this event, there were no policies  
11      and procedures or at least provided how they  
12      deliberate.

13          Q.       When you say "provided," you mean  
14      provided to you?

15          A.       Yes.

16          Q.       Did you ask for them?

17          A.       I believe the policies and  
18      procedures were asked for. I believe there was  
19      one provided on irregular behavior; but that  
20      wasn't, as far as from the records, that was  
21      not in effect at the time of this incident.

22          Q.       From your own professional  
23      experience, do you have firsthand knowledge of  
24      whether and what policies and procedures ECFMG

1 had in time -- at the relevant time in place?

2 A. I do not have any individual  
3 knowledge. I, as a physician, rely upon ECFMG  
4 would have presume that they would have had  
5 adequate policies and procedures to follow, to  
6 process, verify, and adjudicate issues; but I  
7 don't know those specific policies. What -- I  
8 have not seen any that were in effect at that  
9 time.

10 Q. But from your own professional  
11 experience, you don't know one way or the other  
12 whether ECFMG had policies in place at the  
13 relevant time; is that correct?

14 A. I believe from the depositions and  
15 testimonies that were provided, there is claim  
16 that they were not; but the policy was created  
17 later.

18 Q. I'm just trying to get an  
19 understanding of your only personal knowledge  
20 separate from this case.

21 Do you have any knowledge one way  
22 or the other?

23 A. I do not have any knowledge  
24 separate from this case.

1 Q. Do you know about USMLE's policies  
2 and procedures on irregular behavior?

3 A. I do not.

4 Q. Okay. Do you know whether at the  
5 time they had policies on irregular behavior?

6 A. I have not reviewed any.

7 Q. But you don't know one way or the  
8 other?

9 A. I do not.

10 Q. Do you have an understanding of  
11 whether contemporaneously ECFMG staff evaluated  
12 whether there was sufficient information to  
13 bring an allegation of irregular behavior  
14 against Dr. Akoda to the Medical Education  
15 Credentials Committee?

16 A. I'm sorry. I'm losing you a little  
17 bit in that question.

18 Q. Sure. Do you know if whether in  
19 real time --

20 A. Uh-huh.

21 Q. -- ECFMG staff evaluated whether or  
22 not in their experience and their view there  
23 was sufficient information to bring an  
24 allegation of irregular behavior against

1 Q. -- they had the real number?

2 A. Unfortunately, I think some  
3 individuals were less than reputable, figured  
4 that out, and went in and literally stamped --  
5 these were the days that you still stamped and  
6 signed prescriptions.

7 Q. Before electronic?

8 A. Yes.

9 Q. Yeah. Do you have an understanding  
10 of the whether Dr. Akoda perpetrated a fraud of  
11 any sort?

12 A. Yes.

13 Q. Okay. On whom do you believe  
14 Dr. Akoda perpetrated a fraud?

15 A. Well, Dr. Akoda as we've previously  
16 talked about said he used someone else's social  
17 security number at, I believe, it was Jersey  
18 Shore Hospital. So he used someone else other  
19 than that.

20 And in these files, we've come to  
21 see that multiple times he applied to ECFMG and  
22 held out that he had never applied before.

23 Q. You would agree that he perpetrated  
24 a fraud on ECFMG?

1           A.       I believe, yeah, he submitted -- I  
2 believe he submitted an application that had  
3 incorrect information on it.

4           Q.       Would you agree that he perpetrated  
5 a fraud on the Maryland licensing authority?

6           A.       I'm not familiar with the  
7 application whatever he submitted to them, so I  
8 wouldn't be --

9           Q.       Do you believe Dr. Akoda  
10 perpetrated a fraud on the patients he treated?

11          A.       I believe he did, yes.

12          Q.       Do you believe that Dr. Akoda  
13 perpetrated a fraud at the hospital system at  
14 which he practiced?

15          A.       Again, I was not privy to their  
16 credentialing files or processes.

17          Q.       Who first contacted you in  
18 connection with this lawsuit?

19          A.       I'm trying to remember. I believe  
20 it was a referral expert institute or if I  
21 remember now.

22          Q.       It may have been through a  
23 consulting company?

24          A.       It may have been, yes.



1           Q.       And what consulting companies do  
2   you work with?

3           A.       There are a couple, two or three,  
4   that list your name; and I believe I'm on  
5   several of them.

6           Q.       Okay. Do you know which ones  
7   you're on?

8           A.       I think it's like a -- is it  
9   Rooters or Randolph's?

10          Q.       All right. But do you recall who  
11   represents plaintiffs? Who first contacted you  
12   the first time you were in contact with  
13   plaintiffs' counsel in this case?

14          A.       I believe it was -- the way it  
15   worked is this referral agency that lists my  
16   name said there was a case would I be  
17   interested, and then we had a phone call with  
18   plaintiffs' attorneys to discuss the case.

19          Q.       Was anyone else on the call with  
20   you and plaintiffs' counsel?

21          A.       I believe it was just us and the  
22   plaintiffs' counsel.

23          Q.       Do you recall who you spoke to at  
24   plaintiffs' counsel?

1           A.       Uh-huh.

2           Q.       If there's anything else that we've  
3       not yet discussed today that you considered in  
4       rendering your opinions in this case?

5           A.       Just I've just reviewed the  
6       materials that were sent by plaintiffs'  
7       counsel.

8           Q.       Okay. Did you ask for anything  
9       additional that you did not receive?

10          A.       The only thing I asked for was were  
11       there policies and procedures that ECFMG used  
12       at the time of this event.

13          Q.       And did you get any in response?

14          A.       We have not gotten any.

15          Q.       Have you ever read an ECFMG  
16       information booklet?

17          A.       Yes.

18          Q.       Do you know what that is?

19          A.       Yes.

20          Q.       Can you describe what that  
21       information booklet is?

22          A.       I believe -- what I -- what I've  
23       read is from the website. There's a booklet  
24       that the ECFMG puts out that provides

1 information. I believe the target audience is  
2 applicants, but I think it's also used by  
3 residencies and hospitals and others.

4 Q. And you said you looked at it on  
5 the website.

6 So was that the most recent version  
7 you were looking at?

8 A. Yes.

9 Q. Have you looked at any historic  
10 information booklet?

11 A. I have not.

12 Q. Have you asked whether there was an  
13 information booklet that controlled for the  
14 relevant time period in this case?

15 A. I had not.

16 Q. Are you --

17 A. I had asked for just policies and  
18 procedures that they followed at the time.

19 Q. So you received of the Bates  
20 stamped ECFMG documents ECFMG '10 through '706,  
21 correct?

22 A. That's what it says, yes.

23 Q. Are you aware that the production  
24 ECFMG made that included those numbers also

1       went all the way up to '3084?

2               A.       I have not.

3               Q.       And included historic information  
4       booklets containing policies and procedures  
5       from 1992 through 2012?

6               A.       I'm not aware of that.

7               Q.       Okay. And you didn't see those or  
8       review those?

9               A.       No. I specifically asked for  
10      policies and procedures at the time.

11              Q.       Is there a reason why you're  
12      drawing a distinction between an information  
13      booklet and policies and procedures? You don't  
14      think policies and procedures could be  
15      reflected in an information booklet?

16                      MR. VETTORI: Objection as to form.  
17                      Go ahead.

18                      THE WITNESS: In general an  
19      information booklet is a summary or a  
20      promotional document and not necessarily  
21      what staff or others would follow in an  
22      organization to handle affairs.

23                      It would be similar to hospital.  
24      We put out brochures about our hospital,

1           but I run the hospital by our policies and  
2           procedures.

3       BY MS. McENROE:

4           Q.       Do you know whether ECFMG used  
5           irregular behavior policy and procedures as  
6           contained within the information booklet so  
7           that the applicants have the entire policy  
8           since it's important?

9           A.       All I know is what I saw in the, I  
10          believe it was the deposition of, I believe it  
11          was Mr. Kelly, who had said that at the time  
12          that they didn't have one, and they created one  
13          after this which is the current policies and  
14          procedures.

15          Q.       We're going to take a quick break  
16          to change the tape.

17          A.       Okay.

18                   THE VIDEOGRAPHER: The time is  
19           12:52 p.m., and we are going off the  
20           record -- 12:15 p.m. We're going off the  
21           record.

22                   (Whereupon, a lunch break was  
23           taken.)

24                   THE VIDEOGRAPHER: The time the

1 12:50 p.m., and we are back on the record.

2 BY MS. McENROE:

3 Q. Good afternoon, Dr. Markenson. You  
4 understand you're still under oath?

5 A. Yes.

6 Q. Did you review any documents  
7 produced by Howard University.

8 A. I did not.

9 Q. Okay. Do you have any  
10 understanding of whether or not those documents  
11 were produced, that there were any Howard  
12 University documents produced in this case?

13 A. I do not.

14 Q. Do you have any understanding of  
15 what Howard University required from applicants  
16 through their residency programs?

17 A. I do not.

18 Q. Do you know what Dr. Akoda provided  
19 to Howard University in applying to their  
20 residency programs?

21 A. I do not.

22 Q. Do you know under what name  
23 Dr. Akoda applied to the Howard University  
24 residency program?

1           A.       I do not know the specific name he  
2       put on the application.

3           Q.       Do you know whether that name  
4       matched the ECFMG certificate?

5           A.       I do not.

6           Q.       Have you seen any documents  
7       produced in this case from the American Board  
8       of Obstetrics and Gynecology?

9           A.       I have not.

10          Q.       Do you know whether or not  
11       Dr. Akoda became certified in OB/GYN?

12          A.       I don't believe -- I don't remember  
13       if there was anything I saw in the records that  
14       said if he did or did not.

15          Q.       Would you be surprised to learn  
16       that he did?

17          A.       Neither surprised or not.

18          Q.       Did you review any documents  
19       produced in this case from Jersey Shore Medical  
20       Center?

21          A.       Nothing produced -- the only  
22       documents I saw were in the ECFMG file, a  
23       letter from them to ECFMG.

24          Q.       So you haven't seen any documents

1 produced directly from Jersey Shore Medical  
2 Center?

3 A. No.

4 Q. Unless they were duplicates?

5 A. Yes.

6 Q. Do you know whether Jersey Shore  
7 Medical Center notified Maryland regarding  
8 their dismissal of Dr. Akoda from their  
9 residency program?

10 A. I do not.

11 Q. Do you know whether there are  
12 certain moral or ethical standards for medical  
13 licensing boards?

14 A. I can speak to the states that I've  
15 been a licensed in.

16 Q. Sure.

17 A. That they usually have is one of  
18 the requirements that you can lose your license  
19 and be reprimanded nonmoral or nonethical  
20 behavior. Sort of a catch-all phrase.

21 Q. Moral torpitude types of things?

22 A. Yeah. They usually have some  
23 catch-all.

24 Q. So we discussed earlier this



1 relevant to your opinions in this case?

2 A. I did not form an opinion about the  
3 medical licensing of him other than -- I'm  
4 sorry.

5 I have -- I've not seen this  
6 letter, so it wasn't part of my opinion.

7 Q. Okay. Is it relevant to the  
8 opinions you provided?

9 A. To me, it's just further evidence  
10 of his irregular behavior.

11 Q. Right. Or his fraud, right,  
12 because he also was then defrauding Maryland  
13 based on the information in this letter at  
14 least?

15 A. Based on this letter, they're  
16 saying, yes, that he submitted an incorrect  
17 one.

18 Q. And Maryland knew that before they  
19 issued him a medical license.

20 Do you see that as well?

21 A. I don't know if Maryland knew or  
22 didn't know or who did.

23 Q. Would you expect that Maryland  
24 would have issued him a medical license if

1 Maryland had known that he had, Dr. Akoda, had  
2 submitted a social security number that was not  
3 his own to Maryland?

4 A. I can't speak to what Maryland  
5 would do with their processes or their rules.

6 Q. But you can speak to ECFMG's  
7 processes and rules?

8 A. I can speak to what I know about  
9 ECFMG and their failure to, you know, revoke a  
10 certification when this came to light about --  
11 based on irregular behavior.

12 The processes that a licensing  
13 board may take or not take, I would have to  
14 review to know.

15 Q. Okay. So you would need more  
16 complete information on what Maryland did  
17 before you could form your opinions; is that  
18 what you are saying?

19 A. Well, I would need to know what  
20 their process was; did they investigate, what  
21 they did or did not do.

22 Q. So what do you know about ECFMG  
23 processes? So how are you proffering opinions  
24 on ECFMG when you're saying you can't on

1 Maryland?

2 A. For what I've seen in the files  
3 that ECFMG is has provided.

4 Q. Well, that counsel has chosen to  
5 provide to you, right? That's only a subset of  
6 the materials that ECFMG has provided.

7 A. Well, I also have the depositions  
8 of Mr. Kelly and -- hopefully I don't  
9 mispronounce it -- Corda [sic] I believe --

10 MR. VETTORI: Corrado.

11 THE WITNESS: -- about the  
12 processes that they follow.

13 BY MS. McENROE:

14 Q. Did you get the deposition  
15 transcript of Mr. Stephen Seeling?

16 A. Yes.

17 Q. Did you review that deposition  
18 transcript?

19 A. Yes.

20 Q. Where is that listed on the  
21 materials that I've been provided? Why did you  
22 not mention that previously?

23 A. Well, what I mentioned to you is I  
24 said I would have to review all the letters to

1 know every document I reviewed.

2 Q. Do you understand that there's a  
3 federal requirement in submitting your expert  
4 report to include a list of your materials  
5 considered?

6 A. I believe -- if there is such a  
7 rule, yeah, I believe we've talked about the  
8 rules, yes. I think I would have listed on my  
9 report all the things that I did.

10 Q. Did you list on your report all the  
11 things you did?

12 A. Let's see. I have to go back to  
13 the report.

14 Q. Sure. It's Exhibit 4.

15 A. I listed, yes, the documents which  
16 includes the documents you obtained -- you  
17 submitted -- you provided to me. I did not  
18 list every single one that they provided to me  
19 by detail in this report.

20 Q. Right. And you also didn't list  
21 the deposition transcript of Mr. Seeling,  
22 correct?

23 A. Uh-huh. I did not list that here,  
24 no.

1 Q. But did you consider that?

2 A. I believe that was one of the  
3 documents I looked at, yes.

4 Q. So what else did you look at that's  
5 not listed here?

6 A. I'd have to go, like I said earlier  
7 in the day, pull all of the files and letters  
8 that I was sent to be accurate of every single  
9 document I was sent. I don't remember off the  
10 top of my head every document I was sent.

11 (REQUEST NO. 1)

12 MS. McENROE: So Counsel, it's a  
13 material deficiency that there's not a  
14 full list of the materials provided either  
15 with his expert report; and we've even  
16 asked for it in follow-up.

17 So I'll ask that following this  
18 deposition, we get a complete list of  
19 materials considered; and at the end of  
20 the day, I'll reserves rights to reopen  
21 the deposition depending on the  
22 information we've learned.

23 MR. VETTORI: I'll take your  
24 question under consideration.

1 BY MS. McENROE:

2 Q. So sticking with your expert report  
3 you have in front of you.

4 A. Okay.

5 Q. Exhibit 4.

6 A. Yes.

7 Q. So you indicate that the documents  
8 you reviewed are documents that were provided  
9 to you.

10 A. Right.

11 Q. Did you do any other research  
12 regarding ECFMG or anything else to help you  
13 prepare this expert report?

14 A. I think the only other thing that I  
15 did is I went to ECFMG's website.

16 Q. Okay. And what did you do on  
17 ECFMG's website?

18 A. I looked at their "About," their  
19 "Mission," their "Values," their "Statement."

20 Q. Anything else?

21 A. No. I just looked through the  
22 website.

23 Q. Did you contact ECFMG?

24 A. I did not.

1           Q.       Okay. Did you initiate an  
2       application to proceed through ECFMG's  
3       certification process?

4           A.       I did not.

5           Q.       You have, if I may characterize it  
6       correctly, you have at the beginning a summary  
7       of the facts that you say you considered in  
8       forming your opinions?

9           A.       I'm sorry? Yes.

10          Q.       And then towards the back end, you  
11       have opinions that you formed.

12                   Is that a fair description of the  
13       setup of your expert report?

14          A.       Yes.

15          Q.       Okay. So in forming the "Facts"  
16       section towards the beginning of your report --

17          A.       Sure.

18          Q.       -- from where did you get the facts  
19       that you recite here in your expert report?

20                   MR. VETTORI: So for the record, I  
21       instruct the witness not to answer any  
22       questions about draft reports and whether,  
23       in fact, it comes from a draft report that  
24       he did and that counsel may have worked on

1           A.       Okay.

2           Q.       Do you see where I am?

3           A.       Yes, I do.

4           Q.       Okay. It says, "In 2006,  
5 IGBERASE." I'm going to stop there for a  
6 second.

7                    You understand that's Dr. Akoda  
8 that we've been talking about today?

9           A.       Yes.

10          Q.       "Using the name," quote, "'John  
11 Charles Akoda,' and the 1623 SSN assigned to  
12 Individual A, applied for residency at Howard  
13 University."

14                   Do you see that?

15          A.       Yes, I do.

16          Q.       It goes on to say, "In March of  
17 2007, Howard University accepted IGBERASE into  
18 its residency program, and asked IGBERASE to  
19 submit evidence of legal residence in the  
20 United States. In response, IGBERASE submitted  
21 a false permanent resident card in the name  
22 "N. Akoda, John Charles."

23                   Do you see that?

24          A.       Yes, I do.



1           Q.       Okay. Did you take into account  
2       these false materials provided to Howard  
3       University in their process in forming your  
4       opinions in this case?

5           A.       I mean, I've reviewed this  
6       material; but which specific -- what are you  
7       referring to?

8           Q.       Sure. So it's saying here that  
9       Dr. Akoda submitted a false permanent resident  
10      card to Howard University.

11          A.       Uh-huh.

12          Q.       As well as him having been required  
13      to submit evidence of legal residence in the  
14      United States.

15          A.       Yes.

16          Q.       Did you take into account the fact  
17      that he submitted a false permanent resident  
18      card to Howard University in forming your  
19      opinions?

20          A.       I knew this fact, but I wasn't  
21      asked to opine on Howard University's actions.

22          Q.       Okay. Do you know what, if  
23      anything, Howard University did to verify the  
24      1623 social security number provided to it by

1 Dr. Akoda?

2 A. I do not know their processes.

3 Q. Do you believe it's ECFMG'S fault  
4 that Dr. Akoda submitted a false permanent  
5 residency card to Howard University?

6 A. I do not believe ECFMG -- I believe  
7 he submitted the false residency card.

8 Q. So Dr. Akoda perpetrated a fraud on  
9 Howard University?

10 A. He submitted a false  
11 identification, yeah -- a false social security  
12 number.

13 Q. Okay. Both a false social security  
14 number and a false permanent residency card to  
15 Howard University, correct?

16 A. Yeah, I believe -- yes.

17 Q. And to be a resident, I presume  
18 someone needs to physically show up to finish a  
19 residency program; is that correct?

20 A. Yes.

21 Q. And it's a quite a rigorous  
22 experience, correct?

23 A. It can be, yes.

24 Q. And it's a lot of hours?

1           A.       It can be, yes.

2           Q.       So Howard University would have  
3 supervised Dr. Akoda quite extensively for him  
4 to complete a residency program there?

5           A.       They would have complied with the  
6 supervision requirements, yes.

7           Q.       And what are the supervision  
8 requirements, if you know, generally speaking?

9           A.       Generally speaking, ECFMG requires  
10 progressive supervision. They define it as  
11 different levels, direct and indirect,  
12 observed, not observed. And throughout your  
13 residency, the degree of supervision varies as  
14 you progress.

15          Q.       In your experience, are medical  
16 residents permitted to actually examine  
17 patients?

18          A.       Yes.

19          Q.       And are medical residents allowed  
20 to actually treat patients?

21          A.       What do you mean by "treat"?

22          Q.       Lay hands on patients.

23          A.       They're allowed to, yeah, examine,  
24 yes.

1           Q.       Are they allowed to do any  
2       procedures of any sort on patients?

3           A.       They are within their scope and  
4       supervision requirements.

5           Q.       If a resident were to observe an  
6       examination, for example, or were to examine a  
7       patient but not lay hands on them, so take a  
8       medical history, whatever it might be, would  
9       their name necessarily appear in the medical  
10      records, in the patient's medical records,  
11      rather?

12          A.       Whether the resident's name appears  
13      or not would really be related to what they did  
14      and what the hospital's policies and procedures  
15      are for documentation.

16          Q.       Sure. So it's possible that a  
17      resident can be involved in conducting an  
18      examination, but their name would not appear in  
19      a patient's medical records?

20          A.       It is possible.

21          Q.       Do you expect that somebody without  
22      medical training could successfully complete a  
23      residency program?

24          A.       It's a hard question. I would

1 say -- I would like to say that they shouldn't,  
2 but there probably is some ability -- there's  
3 probably some ability that someone could have  
4 in a certain -- in residencies. Every  
5 residency is different in requirements.

6 If they did some of their own  
7 studying, virtual, who knows, that they might  
8 be able to get through; but in general, one has  
9 to have medical knowledge to get through a  
10 residency.

11 Q. And you would expect that to be  
12 true for an OB/GYN specialist?

13 A. I would expect in general, yes.  
14 Not a hundred percent, it'd be a feat.

15 Q. Going back to your expert report at  
16 Exhibit 4.

17 A. Uh-huh.

18 Q. Page 3, third paragraph down.

19 A. Page 3, third paragraph down.

20 Q. I'm going to pick up where I had  
21 just left off with the sentence that starts,  
22 "He was licensed."

23 A. Yes.

24 Q. Do you see that?

1           A.       Yes.

2           Q.       It says, "He was licensed to  
3       practice medicine in Maryland and Virginia, and  
4       was granted privileges at Prince Georges'  
5       Hospital Center based on application and  
6       submission of required documentation including  
7       an ECFMG certificate."

8                   Do you see that?

9           A.       Yes, I do.

10          Q.       So I'm going to break that down a  
11       little bit.

12                   Have you looked into you or do you  
13       know about the licensing requirements for  
14       Maryland or for Virginia?

15          A.       Specific licensing? Every detail?  
16       No, I do not.

17          Q.       Do you know in broad strokes the  
18       licensing requirements for Maryland and  
19       Virginia?

20          A.       I know that all states have  
21       certain -- there are certain requirements for  
22       licensure that applies everywhere, which is  
23       verification of medical school completion,  
24       verification of a year of training.

1 Q. Okay. What else would you expect  
2 to be included?

3 A. Usually -- I don't know if it's a  
4 requirement to get the license, but usually  
5 they require information. They usually ask  
6 about past training, past hospital employment,  
7 other licenses.

8 But what the criteria is, each  
9 state has their own Medical Practice Act.

10 Q. Would you expect that a licensing  
11 board would ask about residency programs from  
12 which an applicant had been dismissed from?

13 A. May or may not. I've seen  
14 different forms of applications.

15 Q. Looking back -- so we'll keep  
16 Exhibit 4.

17 A. Okay.

18 Q. But let's take out Exhibit 9 again.

19 A. Okay.

20 Q. Looking back where we left off in  
21 Exhibit 9.

22 A. Yes.

23 Q. Where we left off, we'll pick up at  
24 "In 2011."

1 Do you see where I am?

2 A. Yes, I do.

3 Q. It says, "In 2011, after the  
4 completion of his residency at Howard  
5 University, IGBERASE, using the name 'Charles  
6 John Nosa Akoda' and the 1623 SSN, applied for  
7 medical licensure with the Maryland Board of  
8 Physicians."

9 Do you see that?

10 A. Yes, I do.

11 Q. It goes on to say, "In support of  
12 this application, IGBERASE submitted a false  
13 permanent residence card, as well as a false  
14 Nigerian passport."

15 Do you see that?

16 A. Yes, I do.

17 Q. It goes on to say, "In September  
18 2011, the Maryland Board of Physicians granted  
19 the requested medical license to IGBERASE under  
20 the name," quote, "'Charles John Nosa Akoda,"  
21 and IGBERASE began practicing medicine in the  
22 field of obstetrics and gynecology."

23 Do you see that?

24 A. Yes, I do.



1 Q. Do you know what, if anything,  
2 Maryland did to verify Dr. Akoda's permanent  
3 residence card?

4 A. I do not.

5 Q. Do you know what, if anything,  
6 Maryland did to verify Dr. Akoda's Nigerian  
7 passport?

8 A. I do not.

9 Q. Following residency, in your  
10 experience, would a medical license be required  
11 to treat patients?

12 A. Yes. I -- yes, in States you're  
13 required a license to practice. Usually the  
14 only exception is while in training.

15 Q. Going back to where we were in your  
16 expert report at page 3.

17 A. Sure.

18 Q. So we just talked about the  
19 practicing of medicine in Maryland and  
20 Virginia.

21 You also talked about Dr. Akoda  
22 having been granted privileges at Prince  
23 Georges' Hospital Center.

24 Do you remember that?

1 A. Yes. I see that here, yes.

2 Q. So going back to Exhibit 9.

3 A. Okay.

4 Q. And where it starts, "In 2012."

5 Do you see where I am?

6 A. Yes, I do.

7 Q. It says, "In 2012, IGBERASE, using  
8 the," quote, "'Akoda' identity, sought and  
9 obtained medical privileges at Prince George's  
10 Hospital Center," which they shorten to PGHC,  
11 "in Maryland. To do so, Igberase submitted a  
12 false permanent residence card, as well as a  
13 false Maryland driver's license."

14 Do you see that?

15 A. Yes, I do.

16 Q. Do you know what, if anything,  
17 Prince George's did to verify Dr. Akoda's  
18 permanent residence card?

19 A. I do not.

20 Q. Do you know what, if anything,  
21 Prince George's did to verify Dr. Akoda's  
22 driver's license?

23 A. I do not.

24 Q. Do you know anything about the

1           A.       Again, since I wasn't provided them  
2   and all I have is the draft, I can't say that.

3           Q.       So you don't know what the policies  
4   and procedures are as we sit here today?

5           A.       I just know the standard. I don't  
6   know what their -- I've asked for policies and  
7   procedures, and we haven't been provided any.

8           Q.       You say "we." You mean you haven't  
9   been provided any, correct?

10          A.       Uh-huh, correct.

11          Q.       Is it your opinion that ECFMG has a  
12   duty or an obligation to make sure that  
13   individuals it certifies never break the law?

14          A.       Again, I personally believe -- this  
15   is from my expertise and knowledge -- that  
16   ECFMG'S role is not as a law enforcement agency  
17   but a certification body.

18          Q.       Okay. And so I just want to make  
19   sure I understand.

20                    So if ECFMG certifies someone and  
21   they go on to commit tax fraud later on in  
22   their career, would you then look back and hold  
23   ECFMG accountable that they should have figured  
24   that out?

1           A.       No. But if in order to practice  
2 tax, they needed ECFMG certification to be  
3 licensed, then they would have never been  
4 allowed to practice tax.

5                   So I don't -- I don't hold them  
6 accountable to law enforcement; but anything  
7 that an individual was allowed to do based on  
8 their certification, they do have culpability  
9 in that case.

10          Q.       So you think if a practitioner, a  
11 physician, goes on to be a creep, a sexual  
12 predator, is that somehow ECFMG'S fault if  
13 ECFMG had certified that that person had, in  
14 fact, graduated from medical school and passed  
15 exams?

16          A.       Well, what they did was their  
17 action at that point; but one has to  
18 acknowledge that if ECFMG did not allow them  
19 to -- did not certify them, allowing them to  
20 obtain a license, they would not be a physician  
21 at that point.

22          Q.       Right. But there are U.S. graduate  
23 physicians who go on to become creeps, right?

24          A.       There are.

1 Q. Sexual predators.

2 MR. VETTORI: Is that a technical  
3 term?

4 MS. McENROE: I changed it to  
5 sexual predators.

6 BY MS. McENROE:

7 Q. Okay. Is that fair?

8 A. There are, yes. Unfortunately,  
9 yes.

10 Q. And do you deem that to be a  
11 failure of the medical school community or, you  
12 know, or is that that practitioner's fault that  
13 they went on to be somebody who breaks the law?

14 A. It is the practitioner's fault, but  
15 there is well documented studies that show that  
16 there are usually red flags throughout their  
17 career if people intervene, that patient would  
18 have never been harmed.

19 Q. Usually, like, while they're  
20 actually practicing medicine.

21 A. No. There's throughout their  
22 entire career. There's well documented studies  
23 that show whether it's medical school  
24 residency, application processes, there are

1 links throughout a career that could have  
2 stopped a progression of events.

3 Q. So I'm just struggling with the  
4 idea that this is like the ultimate Monday  
5 morning quarterbacking, right? You're saying  
6 this person ended up being a sexual predator.  
7 So looking back in history, we could pick up  
8 bread crumbs where someone could have, said,  
9 you don't graduate from middle school; you  
10 don't graduate from high school; you don't  
11 graduate from college.

12 So I'm just trying to understand --

13 MS. McENROE: Let me finish my  
14 question.

15 MR. VETTORI: I am.

16 BY MS. McENROE:

17 Q. I'm just trying to understand how  
18 it is you pick where in that line you assume  
19 and assign all of the fault, as you have with  
20 ECFMG in this case?

21 MR. VETTORI: Objection as to form.

22 THE WITNESS: Where I've assigned  
23 fault is the area I was asked to opine on,  
24 which is he would not have been able to

1           obtain licensure or enter a residency had  
2           ECFMG done the due diligence, picked up  
3           the red flags and not certified him or  
4           revoked the certification.

5       BY MS. McENROE:

6           Q.       So does your opinion basically boil  
7           down to an on/off switch, that if ECFMG had  
8           said he couldn't get a certificate, therefore,  
9           he wouldn't have been able to practice  
10          medicine; is that what you're saying?

11          A.       Well, as part of application for  
12          residency and licensure, there are certain  
13          things that are binary, yes or no; and in the  
14          absence of them, you don't proceed to any other  
15          steps.

16                   ECFMG certification is a credential  
17          that's binary. You don't have it, you can't  
18          get into residency. Absent ECFMG  
19          certification, you can't be licensed. It is a  
20          binary, that all the other things downstream  
21          don't occur towards licensure if that binary  
22          doesn't occur.

23          Q.       So if we were to take a step  
24          forward and say graduation from a residency

1 program is binary, off and on or, you know, one  
2 year of supervised practice, however you had  
3 described it is binary off and on, you either  
4 have that or you don't, that's another place  
5 along the line, right? That would either  
6 on/off shut off the practicing medicine in the  
7 United States?

8 A. It depends on what the requirements  
9 were.

10 Q. And further stepping down the line,  
11 eventually getting to the point of getting a  
12 medical license is also off and on that in any  
13 given jurisdiction, if you don't have a medical  
14 license, you should not be lawfully be  
15 practicing medicine, correct?

16 A. Yes. Without a medical license,  
17 you can't practice medicine.

18 Q. So that's another off/on switch,  
19 correct?

20 A. A medical license is an off/on,  
21 yes.

22 Q. Even if you have a ECFMG  
23 certificate?

24 A. If you have an ECFMG certificate